IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

(1) LINEAR HEALTH SCIENCES, LLC, An Oklahoma Limited Liability Company Plaintiff, v. (1) SITE SAVER, INC., A Delaware Corporation Defendant.	)	Case No. CIV-16-1413-HE **JURY TRIAL DEMANDED**

COMPLAINT

Plaintiff, Linear Health Sciences, LLC ("Plaintiff" or "Linear Health Sciences"), for its complaint against defendant, Site Saver, Inc. ("Defendant" or "Lineus Medical"), alleges and states as follows:

Parties and Personal Jurisdiction

1. Linear Health Sciences is an Oklahoma limited liability company with an address of 4501 Farm Hill Rd., Norman, Oklahoma 73072. Linear Health Sciences holds trademark and other intellectual property rights in the name and mark "Linear Health Sciences" for a number of services and goods in the medical industry.

2. Upon information and belief, Defendant is a Delaware corporation with an address of 179 Church Avenue, Suite 202, Fayetteville, Arkansas 72701, advertising and doing business throughout the United States. Defendant recently changed its name and

began holding itself out as “Lineus Medical” for services and goods in the medical industry that are identical or at least confusingly similar to those of Plaintiff.

Subject Matter Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter of this action on several grounds, as this matter is a matter arising under federal law (under 28 U.S.C. § 1331), between citizens of different states (under 28 U.S.C. § 1331), and specifically arises at least in part under Section 39(a) of the Lanham Act, 15 U.S.C. §1121 and 15 U.S.C. §1125(a) (under 28 U.S.C. § 1338).

4. This Court has supplemental jurisdiction over the claims in this Complaint under 28 U.S.C. § 1367(a) as they arise under the statutory and common law of the State of Oklahoma. Plaintiff’s state law claims are so related to its federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). Infringement and harm that are the subject of this litigation occurred and continue to occur in the Western District of Oklahoma; the claims alleged in this action arose in the Western District of Oklahoma; and victims of Defendants’ infringing activities may be found in the Western District of Oklahoma.

Facts

6. In early 2015, Plaintiff commenced business activities surrounding a medical device, namely, a breakaway medical tubing device, using the business name and trademark

"Linear Health Sciences." On March 13, 2015, Plaintiff formed an Oklahoma Limited Liability Company using the name "Linear Health Sciences." A true and correct copy of the evidence of filing in the office of the Oklahoma Secretary of State is attached hereto as Exhibit 1. In the year after filing, Plaintiff continued its research and development activities on the breakaway medical tubing device and also began fundraising, providing education and public awareness about the new device.

7. Since at least as early as March of 2015, and continuously since its date of first use, Plaintiff has used the name and mark "Linear Health Sciences" on and in association with its business, including the related goods and services.

8. On October 6, 2016, Plaintiff filed United States Trademark Application Nos. 87,194,671, 87,194,755, 87,194,863, 87,194,935 and 87,194,997 for the "Linear Health Sciences" mark in association with promoting public awareness of health issues regarding intravenous administration kits, medical tubing and catheters; providing investment opportunities relating to medical research, procedures and devices; research and development in the medical field; providing online information relating to intravenous administration kits, medical tubing and catheters; and medical devices, namely valve assemblies for use with medical tubing.

9. Through its continuous use of the "Linear Health Sciences" mark and public recognition, Plaintiff has established strong rights in its trademark.

10. As a result of Plaintiff's extensive business endeavors and promotion, Plaintiff has built up substantial value and goodwill in its "Linear Health Sciences" mark.

11. Upon information and belief, prior to September of 2016, Defendant operated under the trade name "Line Gard Med" and/or "Line Gard." In fact, on May 29, 2015, Defendant filed United States Trademark Application No. 86,646,159 on an "intent to use" basis for "Line Gard Med" in association with "medical apparatus, namely, infusion and injection devices for administering drugs; medical devices for placing and securing catheters; tubing for use with catheters."

12. Upon information and belief, Defendant filed United States Trademark Application No. 87,135,218 on an "intent to use" basis for the "Lineus Medical" mark in association with "medical devices, namely, valve assembly for use with medical tubing" on August 11, 2016.

13. Upon information and belief, in September of 2016, Defendant changed its business name and began holding itself out as "Lineus Medical" to promote, advertise, fundraise and provide education and public awareness in the field of medical tubing devices, all virtually identical or at least confusingly similar services and goods to that of Plaintiff.

14. On October 21, 2016, Plaintiff, through its attorney, sent a letter to Defendant's attorney of record via certified mail, alleging that Defendant was infringing on Plaintiff's trademark rights and demanding that Defendant select a non-confusingly similar mark. A true and accurate copy of the letter is attached hereto as Exhibit 2.

15. On November 4, 2016, Defendant, through its attorney of record, sent a written response to Plaintiff's letter, stating that the trademark infringement allegations in the letter were without merit and that Defendant "does not appreciate these unfounded allegations of trademark infringement." A true and accurate copy of Defendant's letter is attached hereto as Exhibit 3.

16. On November 9, 2016, Plaintiff's CEO drafted and sent a letter via email to Defendant's CEO in an attempt to settle the dispute without the need for litigation. A true and accurate copy of this letter to Defendants is attached hereto as Exhibit 4.

17. As of December 9, 2016, Plaintiff has received no further response from Defendant. Plaintiff has not received any indication that Defendant has the intention to discontinue use of the "Lineus Medical" mark. In fact, as of December 9, 2016, Defendant's website is fully operational and prominently bears the "Lineus Medical" mark and displays a similar look, coloring and format as Plaintiff's website. A true and correct copy of a screenshot of the home page of Defendant's website on December 9, 2016, located at http://lineusmed.com/ is attached hereto as Exhibit 5. A true and correct copy of a screenshot of the home page of Plaintiff's website on December 9, 2016, located at http://www.linearhealthsciences.com/ is attached hereto as Exhibit 6 for comparison.

18. Defendant's use of the "Lineus Medical" mark is for goods and services that are identical to or at least confusingly similar to Plaintiff's goods and services in association with its "Linear Health Sciences" mark. Both Plaintiff and Defendant target the same niche

market and have similar customers and donors. Defendant's use is likely to cause substantial consumer and public confusion in the marketplace. The public is likely to be confused between Plaintiff's and Defendant's businesses within a narrow community of the medical industry that has very few other competitors.

19. Defendant's use of the "Lineus Medical" mark has caused actual confusion in the marketplace.

20. Upon information and belief, Defendant is using the "Lineus Medical" mark for commercial gain.

21. Defendant's past and continuing use of the "Lineus Medical" mark that is confusingly similar to Plaintiff's mark is likely to cause confusion, mistake, and/or deceive customers and potential customers of the respective parties as well as the general public, as to some presumed but nonexistent identity, affiliation, connection, sponsorship, and/or association of Defendant with Plaintiff, and/or as to the origin, sponsorship, or approval of Defendant's goods/services by the Plaintiff. Donors are likely to believe that Defendant is Plaintiff and contact Defendant for investment rather than Plaintiff.

22. Defendant's unauthorized use of the mark suggests to current and prospective customers and the public that Defendant and its goods/services are the same as or affiliated, connected, or associated with Plaintiff, or are sponsored, endorsed, or approved by Plaintiff, when in fact they are not.

23. Defendant's unauthorized use of the "Lineus Medical" mark enables the Defendant to call attention to Defendant's business and goods/services, and to trade on and receive the benefit of the goodwill built up at great labor and expense by Plaintiff, and to gain acceptance for its goods/services not on Defendant's own merits, but as a free ride on the reputation and goodwill of the Plaintiff and its known and valuable mark.

24. Defendant is being and will continue to be unjustly enriched at the expense of Plaintiff by Defendant's use of the confusingly similar "Lineus Medical" mark.

25. Defendant's use of the "Lineus Medical" mark places the valuable reputation and goodwill of Plaintiff's trademark improperly in the hands of Defendant.

26. Unless this Court restrains these acts of Defendant, Defendant will continue to cause irreparable injury to Plaintiff and to the public, for which there is no adequate remedy at law.

COUNT I

TRADEMARK INFRINGEMENT

27. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint and incorporates them herein by reference.

28. Defendant's wrongful use of the "Lineus Medical" mark infringes Plaintiff's "Linear Health Sciences" trademark, in violation of Section 32 of the Lanham Act (15 U.S.C. § 1125(a)).

29. Defendant's conduct has injured and will continue to injure Plaintiff by impairing the goodwill associated with its "Linear Health Sciences" mark, has resulted in and will result in value that unjustly enriches Defendant and injures Plaintiff, and has caused and will cause other damage to be proven at trial.

30. Defendant's conduct has caused and will continue to cause irreparable injury to the Plaintiff unless Defendant's conduct is permanently restrained and enjoined by this Court.

COUNT II

TRADEMARK INFRINGEMENT UNDER 78 OKLA. STAT. § 31

31. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint and incorporates them herein by reference.

32. Defendant, through use in commerce of a reproduction, copy or colorable imitation of Plaintiff's "Linear Health Sciences" mark in connection with the sale, offering for sale or advertising of its goods/services, has committed infringement in violation of Oklahoma trademark law, 78 Okla. Stat. §31.

33. Plaintiff has been damaged and is likely to continue to be damaged by Defendant's infringement under 78 Okla. Stat. §31.

34. Defendant's infringement has caused and will continue to cause serious and irreparable injury to the reputation and goodwill of Plaintiff for which Plaintiff is without adequate remedy at law.

COUNT III

COMMON LAW UNFAIR COMPETITION AND TRADEMARK INFRINGEMENT

35. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint and incorporates them herein by reference.

36. The acts and conduct of Defendant alleged herein are likely to cause confusion in the trade as to the source of Defendant's goods/services and are likely to lead the public to mistakenly believe that Defendant's goods and services and Plaintiff's goods and services are in some way connected.

37. Defendant's actions constitute intentional and willful unfair competition and trademark infringement in violation of the common law of Oklahoma. As set forth more fully above, Plaintiff has invested a substantial amount of time, effort and money in building its reputation and the associated goods/services in association with its mark. Defendant's acts and conduct were done without Plaintiff's authorization at little or no cost to Defendant.

38. The unfair competition and trademark infringement by Defendant has caused and will continue to cause serious and irreparable injury to the reputation, goodwill and equity of Plaintiff for which Plaintiff is without adequate remedy at law.

39. As a direct and proximate result of the Defendant's unfair competitive acts, Plaintiff has been injured and damaged and will continue to be injured and damaged, and is entitled to injunctive relief and to recover actual damages, costs, and reasonable attorneys' fees.

COUNT IV

UNJUST ENRICHMENT

40. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint and incorporates them herein by reference.

41. The acts of Defendant complained of herein constitute unjust enrichment at the expense of Plaintiff.

Attorneys' Fees

42. This is an exceptional case making Plaintiff eligible for an award of attorneys' fees under 15 U.S.C. § 1117(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that judgment be entered in its favor and against Defendant as indicated below:

A. That this Court grant a permanent injunction pursuant to the powers granted it under 15 U.S.C. §§ 1116-1117, 78 Okla. Stat. §78, and at common law, enjoining and restraining Defendant and its agents, servants, and employees directly or indirectly (i) from using or displaying the "Lineus Medical" mark or any similar variations thereof including, but not limited to, on all of Defendant's websites, advertisements, marketing and promotional materials, social media accounts, signage, banners, trade names, press releases, invoices, stationery, directory listings, and domain names and (ii) from continuing any and all acts of deception, conspiracy, or unfair competition as alleged herein;

B. That this Court, pursuant to the powers granted it under 15 U.S.C. § 1117 and 78 Okla. Stat. §78, award to Plaintiff and against Defendant, damages, profits;

C. That this Court, pursuant to the powers granted it under 15 U.S.C. § 1117, award to Plaintiff and against Defendant reasonable attorneys' fees because this is an exceptional case;

D. That costs of this action be awarded to Plaintiff; and

E. That the Court grant such other and further relief as it deems just and reasonable.

JURY TRIAL DEMANDED

Dated: December 9, 2016

Respectfully submitted,

s/Jennifer B. Rader

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